

**Updated Informative Digest for the  
State Board of Equalization's Adoption of Proposed Amendments to  
California Code of Regulations, Title 18, Section 308.6, *Application for  
Equalization by Member, Alternate Member, or Hearing Officer***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Rule) 308.6, *Application for Equalization by Member, Alternate Member, or Hearing Officer*, on April 28, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Rule 308.6 without making any changes.

The Board received an April 7, 2015, letter from Mr. John McKibben, the Chair of the California Association of Clerks and Election Officials' (CACEO') Board of Equalization Rules Workgroup, which explained that the Clerk of the Board of Supervisors members of the CACEO "strongly support" the proposed amendment to Rule 308.6 and "urge" the Board to adopt the proposed amendments "as drafted." The Board also received an April 28, 2015, letter from Mr. Dale Hough, Chief Appraiser for the Assessment Services Division of the Los Angeles County Assessor's Office, which provided that the Los Angeles County Assessor's Office "approves the proposed amendments as written." However, no other interested parties submitted written comments and no interested parties appeared at the public hearing on April 28, 2015, to comment on the proposed regulatory action.

There have not been any changes to the applicable laws or the effect of, the objective of, and anticipated benefits from the adoption of the proposed amendments to Rule 308.6 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Current Law

The Board has a number of duties in regard to the administration of California's property tax. Under Government Code section 15606, subdivision (c), the Board is given the power and duty to prescribe rules and regulations to govern local boards of equalization and assessment appeals boards when equalizing and county assessors when assessing. In compliance with this duty, the Board has adopted Property Tax Rules 301 through 326 relative to the local equalization process, which is the process by which a county property tax assessment may be appealed to a local board of equalization or assessment appeals board by filing an application.

The Board adopted Property Tax Rule 308.6, pursuant to Government Code section 15606, in order to implement, interpret, and make specific the Revenue and Taxation Code's conflict of interest provisions applicable to county property tax assessment appeals.

Prior to 2009, RTC section 1612.7 required an application filed by an employee of the office of the clerk of an assessment appeals board in the county in which the individual is employed, on the employee's own behalf or with the intention to represent the employee's spouse, parent, or child in an assessment appeal, to be heard in accordance with RTC section 1622.6.

Prior to 2009, RTC section 1622.6 required an application filed by a member or alternate member of an assessment appeals board in the county in which the member serves, on the member's own behalf or with the intention to represent the member's spouse, parent, or child, to be heard by a special alternate assessment appeals board appointed by the superior court.

In addition, prior to its repeal (discussed below), RTC section 1636.5 required an application filed by an assessment hearing officer in the county in which the officer serves, on the officer's own behalf or with the intention to represent the officer's spouse, parent, or child, to be heard in accordance with RTC section 1622.6.

Assembly Bill No. 824 (Stats. 2009, ch. 477) (AB 824) repealed and reenacted RTC section 1612.7 and amended RTC section 1622.6 in order to:

- Add to and revise the statutory list of persons whose applications must be heard in accordance with the procedures in RTC section 1622.6 regarding hearings by special alternate assessment appeals boards appointed by the superior court;
- Grant clerks discretion to refer an application to an actively serving special alternate assessment appeals board in another California county in lieu of requesting that the superior court appoint a new special alternate assessment appeals board to hear the application in the clerk's county; and
- Specify the jurisdiction of special alternate assessment appeals boards to hear applications referred from other counties.

The August 19, 2009, Senate Floor Analysis of AB 824 explained that the California Association of Clerks and Election Officials (CACEO) sponsored the bill, and that the new procedures for clerks to refer an application to an actively serving special alternate assessment appeals board in another county are intended to "be voluntary for both [the referring and receiving] counties."

As a result of AB 824, RTC section 1612.7 currently requires applications filed by the following persons, in the counties in which they serve or are employed, on their own behalf or with the intention to represent their

spouse, parent, or child, to be heard in accordance with RTC section 1622.6:

- A current member of an assessment appeals board or a current member of a special alternate assessment appeals board;
- A current assessment hearing officer;
- A current employee of the office of the clerk of the county board of equalization or assessment appeals board; and
- A current employee of the county counsel who advises the assessment appeals board or represents the assessor before the assessment appeals board.

As a result of AB 824, RTC section 1622.6 currently requires that such applications must be heard by a special alternate assessment appeals board either appointed by the superior court or consisting of three qualified special alternate assessment appeals board members in good standing in another California county.

Senate Bill No. 1494 (Stats. 2010, ch. 654) (SB 1494) subsequently repealed RTC section 1636.5 because similar provisions pertaining to hearing officers were added to RTC section 1612.7 by AB 824.

Property Tax Rule 308.6 reflects the conflict of interest provisions applicable to county property tax assessment appeals prior to the statutory changes made by AB 824 and SB 1494.

Furthermore, RTC section 1624.1 currently provides that “No person shall be qualified to be a member of an assessment appeals board who has, within the three years immediately preceding his or her appointment to that board, been an employee of an assessor’s office.” RTC section 1624.2 currently provides that “No member of an assessment appeals board shall knowingly participate in any assessment appeal proceeding wherein the member has an interest in either the subject matter of or a party to the proceeding of such nature that it could reasonably be expected to influence the impartiality of his judgment in the proceeding. Violation of this section shall be cause for removal under Section 1625 of this code.” RTC section 1625 provides that “Any member of an assessment appeals board may be removed for cause by the board of supervisors.” And, Property Tax Rule 308.6, subdivision (d), currently provides that “Sections 1624.1 and 1624.2 of the Revenue and Taxation Code shall be applicable to the appointment of a special assessment appeals board member.”

### Effect, Objective, and Benefits of the Proposed Amendments

Board staff in the Property and Special Taxes Department, County-Assessed Properties Division, initiated a project to amend Property Tax Rule 308.6 to reflect the changes to RTC sections 1612.7 and 1622.6 made by AB 824, delete the reference in the rule to section 1636.5, which was repealed by SB 1494, and incorporate the provision regarding removal in the second sentence of RTC section 1624.2. Interested parties were provided with staff's proposed draft language for the amendments to the rule on August 28, 2012 (Letter To Assessors 2012/036), and invited to participate in the rulemaking effort.

The draft amendments provided in Letter To Assessors 2012/036 suggested that an application "may only be referred to a county if there is an agreement for the referral between the two counties." The Tulare County Counsel's Office raised concerns that staff's suggested language may be interpreted as requiring a formal contract signed by each county's board of supervisors. Therefore, the Tulare County Counsel's Office suggested replacing staff's suggested language with the following: "Applications may only be referred to a county if that county's assessment appeals board has consented to accept the referral."

Staff agreed with the comment and incorporated the Tulare County Counsel's Office's proposed language into the second draft of staff's proposed amendments to Property Tax Rule 308.6, which was provided to interested parties in Formal Issue Paper 13-001. In addition, staff determined that a violation of RTC section 1624.1 would provide cause for the removal of a special assessment appeals board member under RTC section 1625. Therefore, the second draft of staff's proposed amendments to Property Tax Rule 308.6 provided that both RTC sections 1624.1 and 1624.2 are applicable to the "removal" of a special assessment appeals board member, rather than incorporating the provision regarding removal in the second sentence of RTC section 1624.2.

CACEO raised a concern regarding the revised language providing that "Applications may only be referred to a county if that county's assessment appeals board has consented to accept the referral" in a letter dated March 6, 2013. The letter explained that CACEO's intent in sponsoring AB 824 was to establish a procedure for referring applications under which "the only action or 'agreement' . . . was the 'agreement' between the two clerks involved" and recommended that staff's proposed amendments be revised to read as follows: "Applications may only be referred to a county if that county's clerk of the assessment appeals board has consented to accept the referral."

Staff subsequently accepted CACEO's recommended revision and a third draft of the proposed amendments to the rule, which incorporated CACEO's recommended revision, was sent to interested parties on September 29, 2014 (Letter To Assessors 2014/047). No interested parties raised any further concerns regarding the third draft. Therefore, Board staff prepared Formal Issue Paper 14-010, which recommended that the Board propose the adoption of staff's third draft of the amendments to Property Tax Rule 308.6, and submitted it to the Board for consideration at its January 21, 2015, Property Tax Committee meeting.

During its January 21, 2015, Property Tax Committee meeting, the Board determined that staff's recommended amendments were reasonably necessary to have the effect and accomplish the objective of making Property Tax Rule 308.6 consistent with the provisions of RTC sections 1612.7 and 1622.6, as modified by AB 824, deleting the reference to RTC section 1636.5, which was repealed by SB 1494, and clarifying that RTC sections 1624.1 and 1624.2 are applicable to the removal of a special assessment appeals board member. Therefore, the Board unanimously voted to propose the adoption of the recommended amendments.

The Board anticipates that the proposed amendments to Property Tax Rule 308.6 will promote fairness, increase openness and transparency in government, and benefit members of assessment appeals boards and special alternate assessment appeals boards, assessment hearing officers, employees of the offices of the clerks of the boards of equalization and assessment appeals boards, the clerks themselves, employees of the county counsels, and the general public by providing more clarity as to the application of RTC sections 1612.7, 1622.6, 1624.1, and 1624.2.

The Board has performed an evaluation of whether the proposed amendments to Property Tax Rule 308.6 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because there are no other Property Tax Rules that implement the RTC's conflict of interest provisions applicable to county property tax assessment appeals. In addition, the Board has determined that there are no comparable federal regulations or statutes to Property Tax Rule 308.6 or the proposed amendments to Property Tax Rule 308.6.